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11 Attorneys for Defendants  
12 The Pep Boys Manny Moe & Jack of California  
The Pep Boys – Manny, Moe & Jack

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

17 Art Navarro, individually, and on behalf of  
18 all others similarly situated, and as an  
aggrieved employee pursuant to the Private  
Attorneys General Act of 2004.

Plaintiff.

The Pep Boys Manny Moe & Jack of California, a California Corporation, The Pep Boys - Manny, Moe & Jack, a Pennsylvania Corporation, and DOES 1-25 inclusive.

### Defendants.

Case No. 07-2633 SI

**DECLARATION OF M. MICHAEL COLE  
IN SUPPORT OF DEFENDANTS'  
MOTION TO STAY OR TRANSFER THIS  
ACTION, OR, IN THE ALTERNATIVE,  
TO DISMISS PLAINTIFF'S FIRST,  
SECOND, THIRD, FOURTH, FIFTH,  
SEVENTH, NINTH, ELEVENTH,  
TWELFTH AND THIRTEENTH CLAIMS  
FOR RELIEF**

Judge: Hon. Susan Illston  
Date: September 21, 2007  
Time: 9:00 a.m.  
Room: 10

26 I, M. Michael Cole, declare as follows:

27       1. I am an attorney licensed to practice law before all courts in the State of California  
28 and I am admitted to practice in this Court. I am an associate with Morgan, Lewis & Bockius

1 LLP, attorneys for Defendants The Pep Boys Manny Moe & Jack of California and The Pep Byps  
 2 – Manny, Moe & Jack (“Defendants”) in this action brought by Plaintiff Art Navarro  
 3 (“Navarro”). I have personal knowledge of the following facts and could and would testify  
 4 competently if called to do so.

5       2. Attached hereto as Exhibit “A” is a true and correct copy of the Complaint filed on  
 6 or about January 30, 2007, in the matter of *McEwen v. The Pep Boys Manny, Moe & Jack of*  
 7 *California, et. al.*, Case No. BC365524 in the Superior Court for the State of California, County  
 8 of Los Angeles (hereinafter referred to as the “*McEwen Action*”).

9       3. Defendants removed the *McEwen Action* to the United States District Court for the  
 10 Central District of California on or about April 13, 2007. That case is presently assigned to the  
 11 Honorable Valerie Baker Fairbank. Morgan, Lewis & Bockius LLP are also attorneys for  
 12 Defendants in the *McEwen* action. During the parties’ early meet and confer in that case,  
 13 Plaintiff’s counsel explained the legal and factual bases for his claims. With respect to his  
 14 Second Cause of Action for alleged late payment of wages under California Labor Code sections  
 15 201, 202, and 203, Plaintiff’s counsel explained that this claim was derivative of and based upon  
 16 Plaintiff’s claims for alleged unpaid overtime as well as alleged payments for missed meal breaks  
 17 or rest periods.

18       4. Attached hereto as Exhibit “B” is a true and correct copy of the Complaint filed on  
 19 or about January 8, 2007, in the matter of *Aros, et. al. v. The Pep Boys Manny Moe and Jack of*  
 20 *California*, Case No. BC362326 in the Superior Court for the State of California, County of Los  
 21 Angeles (hereinafter referred to as the “*Aros Action*”).

22       5. Defendant The Pep Boys Manny Moe and Jack of California removed the *Aros*  
 23 Action to the United States District Court for the Central District of California on or about March  
 24 28, 2007. That case was initially assigned to the Honorable George P. Schiavelli. On or about  
 25 April 11, 2007, the *Aros* Action was deemed related to the *McEwen Action* and reassigned to the  
 26 Honorable Valerie Baker Fairbank.

27       6. On or about May 17, 2007, Plaintiff commenced this action in this United States  
 28 District Court for the Northern District of California. On June 12, 2007, the Court signed the

1 parties' stipulation, extending the time for Defendants to answer or otherwise respond to  
2 Plaintiff's Complaint to July 13, 2007. On or about June 26, 2007, Plaintiff filed a First  
3 Amended Complaint, a true and correct copy of which is attached hereto as Exhibit "C."

4       7. For the Court's convenience, attached hereto as Exhibit "D" is a true and correct  
5 copy of a chart I prepared which compares the claims alleged in the instant matter with the claims  
6 alleged in the *McEwen* and *Aros* actions and demonstrates the identical and overlapping nature of  
7 the majority of such claims.

8 I declare the foregoing is true and correct under penalty of perjury of the laws of the  
9 United States and the State of California.

10 Executed this 13th day of July, 2007, in San Francisco, California.

By M. Michael Cole